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2
3 UNITED STATES DISTRICT COURT
4 DISTRICT OF NEVADA

5 * * *

6 GRACE ALBANESE,

7 Plaintiff,

8 v.

9 FEDERAL BUREAU OF
10 INVESTIGATIONS,

11 Defendant.
12

Case No. 2:17-cv-01635-JAD-CWH

REPORT AND RECOMMENDATION

13 Presently before the court is pro se plaintiff Grace Albanese's amended complaint (ECF
14 No. 7), filed on March 30, 2018.

15 **I. BACKGROUND**

16 Albanese's original complaint was one-page document alleging that the "FBI refuse[s] to
17 help me when they know I'm being followed by the same man who is being supported and funded
18 by people who want me to move." (Compl. (ECF No. 6).) Albanese further alleged that the "FBI
19 refuses to pull the plug on 1107 E. Desert Inn Apts 3 and 9 observation of me in my room." [sic].
20 *Id.* Albanese alleged that the FBI's conduct constituted obstruction of justice, and denial of due
21 process and equal protection. *Id.* The court previously screened Albanese's complaint and found
22 it to be devoid of any meaningful facts to support her claims against the FBI. (Screening Order
23 (ECF No. 5).) But the court gave Albanese an opportunity to amend her complaint, with detailed
24 instructions on pleading requirements. (*Id.*)

25 Albanese filed an amended complaint by the court-ordered deadline. (Am. Compl. (ECF
26 No. 7).) The amended complaint is a one-page document that alleges an individual named
27 Amadeo Barrios hacked into Albanese's cellular telephone and that Mr. Barrios and others have
28 been surreptitiously observing Albanese in her bedroom and streaming video live on social

1 media. (*Id.*) Albanese states that the FBI is aware of this conduct but has failed to take action.
2 (*Id.*) The court now re-screens Albanese's amended complaint as required by 28 U.S.C. §
3 1915(e)(2).

4 **II. ANALYSIS**

5 In screening a complaint, a court must identify cognizable claims and dismiss claims that
6 are frivolous, malicious, fail to state a claim on which relief may be granted, or seek monetary
7 relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). A complaint is
8 frivolous if it contains "claims whose factual contentions are clearly baseless," such as "claims
9 describing fantastic or delusional scenarios." *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989).
10 Dismissal for failure to state a claim under § 1915(e)(2) incorporates the standard for failure to
11 state a claim under Federal Rule of Civil Procedure 12(b)(6). *Watson v. Carter*, 668 F.3d 1108,
12 1112 (9th Cir. 2012). To survive § 1915 review, a complaint must "contain sufficient factual
13 matter, accepted as true, to state a claim to relief that is plausible on its face." *See Ashcroft v.*
14 *Iqbal*, 556 U.S. 662, 678 (2009). The court liberally construes pro se complaints and may only
15 dismiss them "if it appears beyond doubt that the plaintiff can prove no set of facts in support of
16 his claim which would entitle him to relief." *Nordstrom v. Ryan*, 762 F.3d 903, 908 (9th Cir.
17 2014) (quoting *Iqbal*, 556 U.S. at 678).

18 Even liberally construing Albanese's amended complaint, the court finds that her factual
19 allegations describe fantastic and delusional scenarios and do not state a claim upon which relief
20 can be granted. Given that Albanese had an opportunity to amend and that her amended
21 complaint does not set forth a plausible claim, it is recommended that the complaint be dismissed
22 with prejudice because amendment would be futile. *See Lopez v. Smith*, 203 F.3d 1122, 1126 (9th
23 Cir. 2000) (stating that a district court is not required to provide leave to amend a complaint if the
24 complaint could not possibly be cured by the allegation of other facts).

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1 **III. CONCLUSION**

2 IT IS THEREFORE RECOMMENDED that Grace Albanese's amended complaint (ECF
3 No. 7) be DISMISSED with prejudice as delusional and frivolous.

4 **IV. NOTICE**

5 This report and recommendation is submitted to the United States district judge assigned
6 to this case under 28 U.S.C. § 636(b)(1). A party who objects to this report and recommendation
7 may file a written objection supported by points and authorities within fourteen days of being
8 served with this report and recommendation. Local Rule IB 3-2(a). Failure to file a timely
9 objection may waive the right to appeal the district court's order. *Martinez v. Ylst*, 951 F.2d
10 1153, 1157 (9th Cir. 1991).

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12 DATED: July 19, 2018

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15 C.W. HOFFMAN, JR.
16 UNITED STATES MAGISTRATE JUDGE
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